

principles of accounting, are unconstitutional in that they would delegate to private parties the power to include or exclude items in determining "retained earnings" for the balance sheet statement without legislative definitional standards.

FRANK J. KELLEY,
Attorney General.

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JUSTICES OF THE PEACE: Fees.

A justice of the peace going out of office is entitled to fees for taking the complaint and issuing a warrant in cases pending before him which have not been completed because the defendant cannot be located. Said justice of the peace, not having entered the complete case on the docket while in office and not having made and filed a report to the prosecutor or certified the case to other magistrates or courts, is not entitled to fees therefor.

No. 4200

November 20, 1963.

Mr. John L. Schwendener
Prosecuting Attorney
Kalamazoo, Michigan

Your recent letter advises that a justice of the peace in your jurisdiction has gone out of office and that a question has arisen as to the fees which should be allowed the justice of the peace in a number of pending criminal cases handled by the justice of the peace. In these cases a complaint was sworn to and a warrant issued, but the warrant has not been served because the defendant cannot be located. You specifically ask whether the justice of the peace is entitled to fees for:

- (1) taking a complaint by oath,
- (2) a warrant,
- (3) entering the cause on the docket,
- (4) for making and filing a report to the prosecuting attorney,
- (5) certifying the case to other magistrates or courts.

You advise that it is your opinion that the justice of the peace should be allowed only the fees for the complaint and warrant.

Section 2, Chapter XV, Act 175, P.A. 1927,¹ as amended, the Code of Criminal Procedure, sets out the services for which a justice of the peace shall be allowed fees. This section provides in part as follows:

"A justice of the peace shall be allowed for taking a complaint on oath, 60 cents; a warrant, 60 cents; for entering any cause upon the docket, 60 cents; a bond or recognizance, 60 cents; for approving the same, 25 cents; issuing a subpoena (not exceeding 10 in any 1 case), 25 cents; for certifying cause to other magistrates or court, 40 cents * * * for making and filing report in a criminal case to the prosecuting

¹ As amended by P.A. 1960, No. 49; M.S.A. 1961 Cum. Supp. § 28.1239.

attorney, 40 cents; * * * and no justices of the peace shall receive any other fee or compensation for any services rendered in any criminal case than such as are hereinbefore provided."

It will be observed that this section contemplates a payment of fees only for services rendered by the justice of the peace. Therefore, in view of the fact that in the cases pending before the justice at the time he left office a complaint had been made and a warrant issued the justice of the peace clearly should be allowed the specified fees for taking the complaint and issuing the warrant.

With regard to fees for entering the cause on the docket and making and filing a report to the prosecuting attorney, you state you do not believe that the justice of the peace should receive fees for these services because the statute does not provide for, nor require that such services be performed by the justice of the peace until the case has been completed, that is, terminated either by a finding of guilty or not guilty, or a dismissal for some reason.

The statute you refer to is Section 2, Chapter XIV, Act 175, P.A. 1927, as amended, Code of Criminal Procedure.² This section provides in part as follows:

"Sec. 2. (1) Every justice of the peace shall keep a loose leaf docket made up of printed docket sheets numbered consecutively by the printer, in which he shall enter all completed criminal cases, which shall contain the following information:

- (a) Name and address of the defendant.
- (b) Operator or chauffeur license and vehicle registration, if available for motor vehicle violations.
- (c) Date and place of offense, and offense.
- (d) Date of complaint and name of complainant.
- (e) Date warrant returned and by whom, or if voluntary appearance, the date of said voluntary appearance.
- (f) Plea of defendant.
- (g) If trial, the date, and whether or not by court or jury, and the verdict.
- (h) Sentence of the court and the date thereof.
- (i) Date of all adjournments and the date adjourned to.
- (j) Name of prosecuting attorney or his assistant, and name of attorney who appeared for the defendant in the case, if any.
- (k) Names of witnesses sworn for the people and the defendant.
- (l) If jury, the names of the jurors.
- (m) Date of appeal and date return was made in circuit court, if any.

"(2) Dockets shall be in such form that exact carbon copies can be made, and a true copy of the docket shall be filed on or before the

² As amended by P.A. 1957, No. 274; M.S.A. 1961 Cum. Supp. § 28.1193.

last day of the month following the month in which the case was completed, with each of the following:

- (a) The clerk of the county.
- (b) The prosecuting attorney of the county.
- (c) The board of auditors, or the board of supervisors of the county if no board of auditors exists.
- (d) The secretary of state for all motor vehicles or traffic cases involving moving violations. The county clerk and secretary of state shall receive only copies of dockets where the defendant was convicted. The copy filed with the county clerk shall be a certificate of conviction, and the copy filed with the secretary of state shall be an abstract of court and record of conviction. The copy for the secretary of state need contain only the information required by the secretary of state and the form shall be approved by the secretary of state. * * *."

As you point out, this section does not require that the docket entry be made or report sent to the prosecutor until the case is completed. Therefore, you are correct in that the justice of the peace is not entitled to fees for entering the cause on the docket or making and filing a report to the county prosecutor. This conclusion is supported not only by the above section, but also by the fact that since only one fee is provided for the docket entry, this fee cannot be paid to the justice of the peace until the complete docket entry is made, that is, a complete entry containing all the information required by Section 2.

With regard to the fee for certifying the case to another magistrate or court, a review of the Code of Criminal Procedure reveals that there is no requirement that an outgoing justice of the peace certify pending cases to his successor and the pending cases clearly are not being referred to another court. Section 48, Chapter XIV, Act 175, P.A. 1927, as amended, Code of Criminal Procedure,³ provides that every justice of the peace shall deliver to his successor in office all files, indexes and dockets and the statute does not authorize the payment of a fee for complying with this provisions. Therefore, it must follow that the justice of the peace is not entitled to a fee for certifying the case to another magistrate or court, where in effect he is only delivering the files, indexes and dockets to his successor in compliance with the statute.

In conclusion, it is the opinion of the Attorney General that the justice of the peace is entitled to fees for taking the complaint and issuing the warrant, and that he is not entitled to fees for entering the case on the docket, making and filing a report to the prosecuting attorney, and for certifying the case to other magistrates or courts.

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Attorney General.

³ Added by P.A. 1957, No. 274; M.S.A. 1961 Cum. Supp. § 28.1237(3).